



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2014-0796; EPA-R01-OAR-2014-0862; A-1-FRL-9933-92-Region 1]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; Nonattainment New Source Review and Prevention of Significant Deterioration Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of New Hampshire on November 15, 2012. This revision amends New Hampshire's Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) programs to make the programs consistent with the federal requirements. EPA is also conditionally approving a commitment from the state to submit revised regulations addressing three elements of EPA's PSD and NNSR programs that were not submitted with the November 15, 2012 submittal. EPA is also approving revisions to two definitions related to New Hampshire's permitting programs that were submitted on July 1, 2003. This action is being taken in accordance with the Clean Air Act.

DATES: This rule is effective on **[Insert date 30 days from date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket Identification No.

EPA-R01-OAR-2014-0796 and EPA-R01-OAR-2014-0862. All documents in the docket are

listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Permits, Toxics, and Indoor Programs Unit, 5 Post Office Square - Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

Copies of the documents relevant to this action are also available for public inspection during normal business hours, by appointment at the Air Resources Division, Department of Environmental Services, 6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095.

FOR FURTHER INFORMATION CONTACT: Brendan McCahill, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Permits, Toxics, and Indoor Programs Unit, 5 Post Office Square - Suite 100, (mail code OEP05-2), Boston, MA 02109 - 3912, telephone number (617) 918-1652, Fax number (617) 918-0652, email mccahill.brendan@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

- I. Background and Purpose
- II. What action is EPA approving in this document?
- III. Final Action
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

I. Background and Purpose

On January 21, 2015 (80 FR 2860), EPA published a Notice of Proposed Rulemaking (NPR) for the State of New Hampshire. The NPR proposed to approve a November 15, 2012 SIP submittal revising the state's PSD program under PART Env-A 619, "Prevention of Significant Deterioration." The NPR also proposed to approve a July 21, 2003 SIP submittal revising the following definitions under PART Env-A 101, "Definitions;" 1) "minor permit amendment," and 2) "state permit to operate."

On April 24, 2015 EPA (80 FR 22956), EPA published a separate NPR for the state of New Hampshire. The NPR proposed to approve a separate portion of the November 15, 2012 SIP submittal revising the state's NNSR program under PART Env-A 618, "Nonattainment New Source Review" The NPR also reaffirmed EPA's January 21, 2015 proposed approval of the November 15, 2012 SIP submittal revising PART Env-A 619, "Prevention of Significant Deterioration" and the July 21, 2003 SIP submittal revising PART Env-A 101, "Definitions."

In addition, the April 24, 2015 NPR proposed to conditionally approve the New Hampshire Department of Environmental Services' (NHDES) commitment to submit revised regulations addressing the following three provisions of the federal NNSR and PSD programs:

- Provisions at 40 CFR 51.165(a)(5)(i) that state approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the plan and any other requirements under local, State or Federal law;
- Provisions at 40 CFR 51.165(a)(6) and (a)(7) that meet the federal regulations applicable to projects at major stationary sources that are not major modifications based on the actual-to-projected actual test but have a "reasonable possibility" of resulting in a significant emission increase; and
- Provisions at 40 CFR 51.166(q)(2)(iv) requiring notice of a draft PSD permit to state air agencies whose lands may be affected by emissions from the permitted source.

The specific requirements for the two SIP submittals and the rationale for EPA's proposed actions are explained in the January 21, 2015 and April 24, 2015 NPRs and will not be restated here. EPA did not receive any public comments on the April 24, 2015 NPR.

II. What action is EPA approving in this document?

EPA is approving and incorporating into the SIP, PART Env-A 618, "Nonattainment New Source Review" and PART Env-A 619, "Prevention of Significant Deterioration" that New Hampshire submitted on November 15, 2012. EPA is approving New Hampshire's definitions of "minor permit amendment," and "state permit to operate" under PART Env-A 101, "Definitions" into the SIP.

Additionally, EPA is approving the commitment letter submitted by the NHDES on March 20, 2015, in which the NHDES committed to adopt revised NNSR and PSD regulations to address three provisions required by the federal NNSR and PSD program regulations. In that letter, NHDES committed to adopt these revisions no later than one year from the date of EPA's conditional approval, and to submit them to EPA for approval into the SIP.

III. Final Action

EPA is approving New Hampshire's July 23, 2003 SIP submittal amending the definitions of "minor permit amendment," and "state permit to operate" under PART Env-A 101, "Definitions."

EPA is approving New Hampshire's November 15, 2012 SIP submittal amending PART Env-A 618, "Nonattainment New Source Review" and PART Env-A 619, "Prevention of Significant Deterioration." With this action, PART Env-A 618 and PART Env-A 619 will supersede all other NNSR and PSD Program regulations currently approved in New Hampshire's SIP.

EPA is conditionally approving NHDES's commitment to adopt and submit to EPA by **September 26, 2016** revised NNSR and PSD regulations which address the following provisions of the federal NNSR and PSD program regulations:

- Provisions at 40 CFR 51.165(a)(5)(i),
- Provisions at 40 CFR 51.165(a)(6) and (a)(7), and
- Provisions at 40 CFR 51.166(q)(2)(iv).

If the State fails to do so, the State's commitment to address these three provisions will become a disapproval on that date. EPA will notify the State by letter that this action has occurred. At that

time, this commitment will no longer be a part of the approved New Hampshire SIP. EPA subsequently will publish a document in the **Federal Register** notifying the public that the conditional approval automatically converted to disapproval. If the State meets its commitment, within the applicable time frame, the conditionally approved submission will remain a part of the SIP until EPA takes final action approving or disapproving the State's SIP submittal of the revised NNSR and PSD regulations which address the three provisions. If EPA approves the submittal, the three provisions will be fully approved in their entirety and will replace the conditional approval in the SIP.

If the conditional approval is converted to a disapproval, such action will trigger EPA's authority to impose sanctions under section 110(m) of the CAA at the time EPA issues the final disapproval or on the date the State fails to meet its commitment. In the latter case, EPA will notify the State by letter that the conditional approval has been converted to a disapproval and that EPA's sanctions authority has been triggered. In addition, the final disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c).

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of PART Env-A 618, "Nonattainment New Source Review;" PART Env-A 619, "Prevention of Significant Deterioration;" and PART Env-A 101, "Definitions" described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or in hard copy at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days from date of publication in the Federal Register]**. Filing a petition for reconsideration

by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 27, 2015.

H. Curtis Spalding,
Regional Administrator,
EPA New England.

Part 52 of chapter I, title 40 of the Code of

Federal Regulations is amended as follows:

PART 52 - [AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart EE – New Hampshire

2. Section 52.1519 is amended by adding paragraph (a)(5) to read as follows:

§ 52.1519 Identification of plan – conditional approval.

(a)* * *

* * * *

(5) On November 15, 2012, the New Hampshire Department of Environmental Services (NHDES) submitted to a request to amend New Hampshire’s Chapter Env-A 600 “Statewide Permit System” as a revision to New Hampshire’s State Implementation Plan. The amendment included revisions to the state’s Nonattainment New Source Review (NNSR) and the Prevention of Significant Deterioration (PSD) programs. On March 20, 2015, New Hampshire submitted a letter to EPA committing to adopt revised regulations which address the provisions at 40 CFR 51.165(a)(5)(i) and (a)(6) and (7) and 51.166(q)(2)(iv) required for EPA to fully approve New Hampshire’s NNSR and PSD Programs.

* * * * *

3. In § 52.1520, the table **in paragraph** (c) is amended by revising the entries for Env-A 100 “Organizational Rules: Definitions” and Env-A 600 “Statewide Permit System” to read as follows:

§ 52.1520 Identification of plan.

* * * *

(c) * * *

EPA-APPROVED NEW HAMPSHIRE REGULATIONS

State citation	Title/subject	State effective date	EPA approval date ¹	Explanations
Env-A 100	Organizational Rules: Definitions	May 3, 2003	[Insert Federal Register date of publication date] [Insert Federal Register citation]	Adding definition of “Minor permit amendment” and “State permit to operate”
**	*	*	*	**
Env-A 600	Statewide Permit System	September 1, 2012	[Insert Federal Register date of publication date] [Insert Federal Register citation]	Approve revisions to Env-A 618 “NNSR” & Env-A 619 “PSD Program” and withdrawal of Env-A 610 and 622 “NNSR Program,” and Env-A 623 “PSD Program”
**	*	*	*	**

¹ In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

* * * * *

[FR Doc. 2015-23176 Filed: 9/24/2015 08:45 am; Publication Date: 9/25/2015]